BINAAN SENTOSA SDN BHD

v.

NG IN KUN & ANOR

HIGH COURT MALAYA, ALOR SETAR
SEE MEE CHUN JC
[CIVIL SUIT NO: 22-239-2009]
21 MARCH 2011

TORT: *Defamation - Defamatory words - Statements in police report and newspaper article - Whether defamatory - Complaint against plaintiff - Statements read in entirety - Context in which words used - Whether established - Soh Chun Seng v. CTOS-Emr Sdn Bhd*

The plaintiff was the developer of Menara Sentosa ('the said property') and the first defendant was a purchaser of a shop lot in the said property. Sometime in 2005, the first defendant lodged a police report against the plaintiff due to dissatisfaction that individual titles had not been issued even after ten years of purchasing the shop lot. On the other hand, the second defendant was alleged to have published an article in their newspaper report entitled "Pemaju didakwa gadaikan bangunan tanpa kebenaran" which referred to the plaintiff. Hence, the plaintiff sued the defendants for defamation. The plaintiff claimed that the words in the police report showed that the plaintiff had cheated the buyers of the shop lots, could not be trusted, had acted dishonestly and misused the grants without the knowledge of the owners by charging it to the bank. The plaintiff also contended that its reputation and credibility as a well known developer had been injured and thus was subject to ridicule and contempt. The issue that arose for consideration herein was whether the statements in the police report and the newspaper article were defamatory against the plaintiff.

Held (dismissing the plaintiff's claim with costs):

(1) In determining whether the words complained of are defamatory, one must take into account not only the actual words but the context in which they were used (*Soh Chun Seng v. CTOS-Emr Sdn Bhd*; refd). (para 11)

(2) The police report, when read in its totality, was an expression of dissatisfaction and a complaint so that investigations may be carried out. The first defendant had lodged the said report so that investigations into the status of the shop lots could be carried out as the purchasers had yet to obtain their strata title. Thus, the report was not defamatory of the plaintiff. (para 14)

(3) The newspaper article was merely an allegation that the plaintiff had charged the properties to a bank instead of applying for and obtaining individual strata title. Nowhere has it been stated that the plaintiff was guilty of wrongdoing. Hence, the article took the form of complaints against the plaintiff as contained in the police report which was to be investigated upon. (para 14)

[Plaintiff had not established that the police report and newspaper article when read in its entirety and context were defamatory.]

Case(s) referred to:

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***

Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor [2010] 5 CLJ 301 HC ***(refd)***

Noor Asiah Mahmood & Anor v. Randhir Singh & Ors [2000] 5 CLJ 407 HC ***(refd)***

Ratus Mesra Sdn Bhd v. Shaikh Osman Majid & Ors [1999] 8 CLJ 499 HC ***(refd)***

Sivabalan P Asapathy v. The New Straits Times Press (M) Bhd [2010] 7 CLJ 885 HC ***(refd)***

Soh Chun Seng v. CTOS-Emr Sdn Bhd [2004] 5 CLJ 46 HC ***(refd)***

Tan Sri Dato' Tan Kok Ping, JP lwn. The New Straits Times Press (Malaysia) Bhd & Yang Lain [2010] 3 CLJ 614 HC ***(refd)***

Other source(s) referred to:

Gatley, *Libel and Slander*, 9th edn, 1998, p 7

For the plaintiff - Ng Aik Beng; M/s AB Ng & Assocs
For the 1st defendant - Latifah Omar; M/s TC Lim & Co
For the 2nd defendant - Rueben Mathiavaranam; M/s Rueben Williams

Reported by Kumitha Abdul Majid

JUDGMENT

See Mee Chun JC:

[1] Plaintiff is suing first defendant (D1) and second defendant (D2) for defamation. Plaintiff is a developer and had developed Menara Sentosa in Alor Setar. D1 purchased a shop lot in Menara Sentosa in 1992 and had lodged a police report against plaintiff on 19 July 2005 (Report No.: 01177/2005, P15). D2 is the printer, publisher and owner of the Malay newspaper Berita Harian and on 21 July 2005 printed and published in the northern edition of the paper a newspaper report entitled "Pemaju didakwa gadaikan bangunan tanpa kebenaran" (P3). The report was written by its journalist Faiza bt Zainudin. Both these formed the basis of the alleged defamatory statements and are set out in para. 6 (against D1) and para. 9 (against D2) of the statement of claim.

[2] The police report is as follows:

> Saya bersama pemilik-pemilik kedai Menara Sentosa Alor Star Kedah tidak puas hati dan ingin membuat laporan kerana pemaju Binaan Sentosa Sdn Bhd telah gagal mengeluarkan geran individual kepada kami setelah 10 tahun kami beli kedai tersebut dan juga tidak berpuas hati apabila mendapat tahu bahawa geran bernombor grn 3281, lot 47 seksyen 21 Bandar Alor Star Daerah Kota Setar Kedah digadai kepada Affin Bank Berhad di bawah adalah senarai pemilik kedai di Menara Sentosa.

[3] What follows are the lot numbers and names of owners. The words underlined are the alleged defamatory statements. Plaintiff claims those words in their natural and ordinary meaning meant or were understood to mean plaintiff had cheated the buyers of the shop lots, could not be trusted, had acted dishonestly and had misused (menyalahgunakan) the grants without the knowledge of the owners by charging to Affin Bank (para. 11 of statement of claim).

[4] D1 is also alleged to have had a press conference on 19 July 2005 where he is purported to have uttered certain statements which were then published by D2 in its newspaper article. The alleged defamatory statements as published are as follows:

> Dua puluh dua pemilik kedai di Menara Sentosa di sini membuat laporan polis di Ibu Pejabat Polis Daerah Kota Star semalam kerana pemaju menara berkenaan menggadaikan harta mereka tanpa kebenaran ... pemaju terbabit ... mencagar kedai di menara

A itu tanpa pengetahuan pemiliknya ... Bagaimana pemaju boleh menggadaikan kedai kami kepada bank lain tanpa pengetahuan kami ...

[5] Plaintiff claims those words in their natural and ordinary meaning meant or were understood to mean plaintiff could not be B trusted, had cheated in its business, was not trustworthy and had misused the master title for its own use without the knowledge of D1 and the Shop Lot Owners Committee (para. 10 of statement of claim).

C **[6]** In para. 12 of statement of claim, plaintiff then states its reputation and credibility as a well known developer, had been injured and it had been subject to ridicule and contempt. Plaintiff thus seeks general, special, aggravated and exemplary damages.

D **[7]** It is well settled law that in order to prove a claim on defamation, three elements must be established – (1) the statement must be defamatory, (2) the statement must refer to plaintiff and (3) the statement must be published by defendants to a third party. Out of these three elements, it is not denied and E was established the statements which are the police report lodged by D1 and the newspaper article published by D2, refer to plaintiff and were published to third parties.

[8] That leaves only the first element of whether the statement F is defamatory. In any event, this is the first thrust of both defendants' defence – that the statements are not defamatory of plaintiff.

Whether The Statements Defamatory

G **[9]** As to what constitutes defamation, I refer to Gatley on *Libel and Slander* 9th edn. 1998 at p. 7:

> What is defamatory? There is no wholly satisfactory definition of a defamatory imputation. Three formulaes have been particularly influential: (1) Would the imputation tend to "lower the plaintiff in H the estimation of right-thinking members of society generally"?; (2) Would the imputation tend to cause others to shun or avoid the plaintiff?; and (3) Would the words tend to expose the plaintiff to "hatred, contempt or ridicule"?

I **[10]** Hence in the Court of Appeal case of *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461 the court said at p. 467:

> ... the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

[11] I am mindful too that in determining whether the words complained of are defamatory one must take into account not only the actual words but the context in which they were used. This is because there may be other words which take away the sting. Refer to *Soh Chun Seng v. CTOS-Emr Sdn Bhd* [2004] 5 CLJ 46 where the following was stated:

> In Gatley ... states:
>
> > It is necessary to take into consideration, not only the actual words used, but the context of the words.
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> At p 97, ... continues:
>
> > It follows from the fact that the context and circumstances of the publication must be taken into account and that the Plaintiff cannot pick and choose parts of the publication which standing alone, would be defamatory, but there may be other passages which take away the sting.

[12] *Soh (supra)* also referred to two other cases *Ratus Mesra Sdn Bhd v. Shaikh Osman Majid & Ors* [1999] 8 CLJ 499 where it was stated at p. 504 that "... it is necessary to consider the whole article" and *Noor Asiah Mahmood & Anor v. Randhir Singh & Ors* [2000] 5 CLJ 407 "... that a claim for libel whilst not to be founded on a headline or photograph in isolation from the related text, the question whether the article was defamatory had to be answered by reference to the response of the ordinary reasonable reader to the entire publication".

[13] Further, case law states the standard to be adopted when determining whether there has been defamation is that "of ordinary reasonable people", "of fair average intelligence", "but who are not avid for scandal" and "should not be unduly suspicious" (*Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 5 CLJ 301; [2010] 2 MLJ 492, at p. 504. At the same page it goes on as follows:

A As such an ordinary reasonable person would presume that a man is innocent until proven guilty although the reality might sometimes be otherwise. This is necessary to protect the media who go no further than merely to report that a person is being investigated by police or has been arrested and charged with a criminal offence.

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[14] With the principles as propounded in the aforesaid cases and Gatley in mind, I proceed to consider the alleged defamatory statements as against D1 and D2.

C (i) As against D1

Referring to the police report reproduced earlier the words underlined are the alleged defamatory statements. Reading the police report in its totality and in its context which includes the non underlined words wherein the dissatisfaction that individual titles had not been issued ten years after purchase of the shop lot had been voiced out, I find it to be an expression of dissatisfaction and a complaint so that investigations may be carried out. As stated by D1 in Q&A eight of his witness statement (D17), he lodged the report in order that investigations into the status of the shop lots could be carried out as the purchasers had yet to obtain strata title. The report is not defamatory of plaintiff.

(ii) As against D2

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Reading the newspaper article in its totality and within its context, I agree with D2 that the article makes nothing more but merely an allegation that plaintiff had charged the properties purchased to a bank instead of applying for and obtaining individual strata title. Nowhere has it been stated that plaintiff is guilty of wrongdoing. This is evident from the words "Pemaju didakwa", "membuat laporan" dan "mendakwa". The article takes the form of complaints against plaintiff contained in a police report which is to be investigated upon.

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I am fortified in this by two other cases of a similar nature – *Tan Sri Dato' Tan Kok Ping, JP lwn. The New Straits Times Press (Malaysia) Bhd & Yang Lain* [2010] 3 CLJ 614 and *Sivabalan P Asapathy v. The New Straits Times Press (M) Bhd* [2010] 7 CLJ 885. In particular in *Sivabalan* it is stated at p. 895 that:

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> ... the news report merely makes an allegation of rape, among others, against the plaintiff as opposed to saying that the plaintiff is guilty of rape and the several other allegations. Thus the sting of the news report is that the plaintiff is merely suspected of alleged to have committed the acts referred to and that the police have detained him for investigations.

No Admission Of Liability

[15] The act of D1 in not responding to the notice of demand of plaintiff's lawyer dated 12 September 2005 (P5) cannot possibly be an admission of liability. The same goes for the letter of apology dated 26 October 2008 (P5) written by D2's reporter Faiza bt Zainudin (DW2). I accept the evidence of DW2, the letter was written with settlement in view. When plaintiff proceeded with the case, the letter cannot be used against D2 as an admission whatsoever.

Conclusion

[16] For the above reasons, plaintiff has not established that the police report and newspaper article when read in its entirety and context, are defamatory of it. Plaintiff's claim against D1 and D2 is dismissed with costs.